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From: Eve C. Gartner <egartner@earthjustice.org>
Sent: Thursday, June 25, 2015 2:38 PM
To: FOIA HQ
Subject: FOIA Request - lead wheel weights
Attachments: FOIA Request - Lead wheel weight petition.pdf

Dear Sir or Madam –

Attached please find a Freedom of Information Request for documents connected to lead wheel weights, including EPA's work to restrict lead wheel weights under its TSCA authority.

We look forward to your response to this request within twenty working days.

Thank you,
Eve Gartner

Eve C. Gartner
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June 25, 2015

By Mail and Email: hq.foia@epa.gov

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667 FAX (202) 566-2147
E-mail: hq.foia@epa.gov

Re: Freedom of Information Request for Documents Relating to TSCA Proceeding
Regarding Lead Wheel Weights

Dear Freedom of Information Officer:

Earthjustice, on behalf of itself and Ecology Center, submits this request for records in accordance with the provisions of the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552.

Background: On August 26, 2009, the Environmental Protection Agency ("EPA") granted a petition under section 21 of the Toxic Substances Control Act ("TSCA") submitted by Ecology Center and others¹ ("Petition"). The Petition sought a ban under section 6(a) of TSCA on the manufacture, distribution, and sale of lead wheel weights. In granting the Petition, EPA stated that the agency "will promptly commence an appropriate proceeding under TSCA . . . through either an Advance Notice of Proposed Rulemaking ["ANPRM"] or a Proposed Rule." According to the RegInfo.gov website, in the Fall 2011, EPA expected to issue a Notice of Proposed Rulemaking ("NPRM") in October 2012. See <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201110&RIN=2070-AJ64>. According to EPA's Regulatory Development and Retrospective Review Tracker, there is currently no projected date for the issuance of an NPRM. See <http://yosemite.epa.gov/oepi/RuleGate.nsf/byRIN/2070-AJ64#2>.

Request: In accordance with FOIA, please provide us with all of the following records:

1) Unredacted copies of all records, data or studies that relate to EPA's August 2009 decision to grant the Petition.

¹ In addition to Ecology Center, the May 28, 2009 Petition was submitted by Sierra Club, Alliance for Healthy Homes, Environmental Health Watch, Center for Environmental Health, Coalition to End Childhood Lead Poisoning, United Parents Against Lead, Lead Technicians, Louisiana ACORN, Dr. Carla Campbell, Professor Howard W. Mielke, and Lelia M. Coyne, PhD.

2) Unredacted copies of all records, data or studies relating to the proceeding EPA commenced in response to the Petition.

3) Unredacted copies of all records, data or studies relating to a decision by EPA not to promptly commence a rulemaking through an ANPRM or an NPRM, as it indicated it would in its August 26, 2009 letter granting the Petition.

4) Unredacted copies of all records reflecting or relating to communications between EPA and any outside organization, corporation, trade group, or law firm related to the Petition or the proceeding commenced in response to the Petition.

5) Unredacted copies of all records reflecting or relating to communications between EPA and any other governmental official, agency or department, including without limitation, the Office of Management and Budget, the EPA Office of Children's Health, the EPA Office of Civil Rights, and the EPA Office of Environmental Justice, related to the Petition or the proceeding commenced in response to the Petition.

6) Unredacted copies of all records reflecting or relating to the effectiveness of state laws banning lead wheel weights.

7) Unredacted copies of all records, data or studies relating to human exposures to lead wheel weights.

8) Unredacted copies of all records, data or studies relating to human health impacts of exposure to lead wheel weights.

Definitions:

The use of the word "record" above includes, but is not limited to, documents in all forms (including electronic), information, emails, faxes, letters, comments, reports, summaries of telephone conversations, handwritten notes, meeting minutes, or any other materials.

The use of the word "unredacted" above means that we are seeking full disclosure of all information in the requested record. In the event that you determine that you can disclose only some of the information contained in a record that falls within the scope of this request, please provide us with a copy of the record with only the information that you have determined to be properly treated as confidential redacted.

If any information requested herein was, but is no longer, in EPA's possession or subject to its control, state whether it is (a) missing or lost, (b) has been destroyed, (c) has been transferred voluntarily or involuntarily to others, or (d) otherwise disposed of, and in each instance, explain the circumstances surrounding and authorization for such disposition of it and state the date or approximate date of it.

If you claim that any of the foregoing information is exempt from mandatory disclosure, we respectfully request that you:

- (1) Provide an index of all documents containing the requested information, reflecting the date, author, addressee, number of pages, and subject matter of such documents;
- (2) State the exemption you deem to be applicable to each information request;

- (3) State with particularity the reason why such exemption is applicable to each information request;
- (4) Examine each information request to determine if reasonably segregable non-exempt information exists which may be released after redacting information deemed to be exempt; and
- (5) Exercise your discretion to release such records notwithstanding the availability of a basis for withholding.

FEE WAIVER REQUEST

Pursuant to 5 U.S.C. § 552(a)(4)(A)(iii), we request a fee waiver because “disclosure of the [requested] information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” *Id.* As demonstrated below, each of the four factors related to the first fee waiver requirement, as specified in EPA’s FOIA regulations at 40 C.F.R. § 2.107(l)(2)(i)-(iv), weigh in favor of granting our fee waiver request.

Factor 1: The Requested Records Concern the Operations or Activities of the Federal Government.

The subject matter of the requested records concerns “identifiable operations or activities of the Federal government,” 40 C.F.R. § 2.107(l)(2)(i), insofar as the requests relate to EPA’s actions to grant the Petition, and subsequent actions to institute regulatory proceedings.

Factor 2: Disclosure of the Requested Records is Likely to Contribute to Public Understanding of Government Operations or Activities.

Disclosure of the requested records is “likely to contribute” to an “increased public understanding,” 40 C.F.R. § 2.107(l)(2)(ii), of government operations or activities because such disclosure will enable Requesters to understand what EPA has done or is doing to follow through with its decision to grant the Petition and commence a proceeding to regulate lead wheel weights under TSCA. This information is not already accessible through EPA’s website. See Factor 4, below.

Factor 3: Disclosure of the Requested Records Will Contribute to the Understanding of a Broad Audience of Persons Interested in Whether, How and When the Government Will Regulate Lead Wheel Weights Under TSCA

Disclosure will “contribute to the understanding of a reasonably broad audience of persons interested in” learning about whether, how and when the Government intends to regulate lead wheel weights, or if EPA has decided not to regulate lead wheel weights, why that decision was made.

Earthjustice is a national nonprofit environmental law firm which has made safeguarding the environment, including safeguarding human health and the environment from toxic chemicals, a key priority, and has developed expertise in this area. Earthjustice has filed or intervened in lawsuits involving the regulation of chemicals, including, for example, helping to defend the listing of styrene in the 12th Report on Carcinogens in *Styrene Information and Research Center, Inc. v. Sebelius*, 944 F. Supp.2d 71 (D.D.C. 2013). And it has submitted comments related to rules proposed under TSCA, including, for example, *Certain*

Polybrominated Diphenyl Ethers; Significant New Use Rule and Test Rule, 77 Fed. Reg. 19862-19899 (April 2, 2012).

In addition to being able to analyze the information provided pursuant to this FOIA request, Earthjustice has the “ability and intention to convey this information to the public.” 40 C.F.R. § 2.107(l)(2)(iii). Earthjustice can review the information it receives, analyze it, and either write an entry for the Earthjustice blog (which receives approximately 35,000 page views per month) or write an article for publication in the Earthjustice monthly electronic magazine (which has a circulation of approximately 70,000 people).

Ecology Center was one of the signatories to the Petition. The Ecology Center has worked on lead in automotive applications for over 15 years. In 2001 we published a widely cited study on dozens of lead uses in vehicles. The study identified several lead uses in motor vehicles which had both large potential for exposure and widely available alternatives. Lead wheel balancing weights were identified as a top priority, particular due to the potential for wide spread exposure due to wheel weight failure and deposition on urban roadways and sidewalks. Since the reports release the Ecology Center has regularly communicated information to the public, manufacturers and retailers on lead weight hazards, potential solutions and availability of alternatives.

Ecology Center shares Earthjustice’s intent to publicize information garnered from this request. Ecology Center will draw on its institutional expertise to analyze and interpret the information provided in response to this FOIA request, and it can share information via our newsletters and regular communication with stakeholders, include our over 100,000 subscribers to our electronic lists. Our web sites have over 1.5 million views per year.

In sum, because of Requesters’ expertise in this area, they are well-prepared to analyze and evaluate the records received pursuant to this request and to disseminate their findings to a broad audience.

Factor 4: The Contribution to Public Understanding of Government Operations or Activities Will Be Significant.

The public’s understanding of government operations or activities by EPA to address the human health hazards associated with lead wheel weights “as compared to the level of public understanding existing prior to disclosure, [will] be enhanced by the disclosure to a significant extent.” 40 C.F.R. § 2.107(l)(2)(iv). Because so little is publicly known or understood about what EPA has been doing since August 2009 to move forward with regulations to address the hazards of lead wheel weights, public understanding of these efforts will undoubtedly be enhanced to a significant extent by disclosures in response to this request.

In addition, the second fee waiver requirement – that the request “is not primarily in the commercial interest of the requester,” 40 C.F.R. § 2.107(l)(1) – is also met here. The Requesters are both 501(c)(3) nonprofit organizations and do not have any “commercial interest that would be furthered by the requested disclosure” of information.² 40 C.F.R. § 2.107(l)(3)(i). Indeed,

² Indeed, the legislative history of the fee waiver provision reveals that it was added to FOIA “in an attempt to prevent government agencies from using high fees to discourage certain types of requesters, and requests,” in particular those from journalists, scholars and nonprofit public interest groups. *See Ettlinger v. FBI*, 596 F. Supp. 867, 872 (D. Mass. 1984).

Requesters' sole interest in obtaining the requested information is to broaden public understanding of what EPA is doing to protect human health from the hazards posed by lead wheel weights.

In sum, this request meets the requirements for a fee waiver. In the event that fees are not waived, please notify and inform us of the basis for your decision.

INSTRUCTIONS FOR RECORD DELIVERY

To the extent that the requested records are available in a readily accessible electronic format, we would prefer to receive the documents electronically, either by email or on a CD. If electronic copies are unavailable, we will accept paper copies. Please send records to Eve Gartner at egartner@earthjustice.org, or mail them to:

Eve Gartner
Earthjustice
48 Wall Street, 19th Floor
New York, NY 10005

As FOIA requires, we expect your response within twenty working days of your receipt of this request. In the event that you have any questions concerning the type of materials we are interested in receiving, please contact me by email or by telephone at (212) 845-7381.

Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Eve C. Gartner". The signature is written in dark ink and is positioned above the printed name.

Eve C. Gartner